

REMARKS/DISCUSSION:

This Response B is being filed within three months after the shortened statutory period for response that ended on February 14, 2007. Accordingly, a Petition for a Three-Month Extension of Time is submitted herewith.

By this Response B, claims 1-9 are pending in this application. Claims 10-24 have been withdrawn, and Claim 26 has been canceled.

Amendment and/or cancellation of claims are not to be construed as a dedication to the public of any of the subject matter of the claims previously presented. Further, Applicant(s) reserves the right to prosecute the subject matter of such claims in continuation and/or divisional applications.

Applicant has carefully studied the outstanding Office Action. This Amendment is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Rejection under 35 U.S.C. § 102(e)

Claims 1, 4 and 8-9 stand rejected as being anticipated by Causevic (2004/0243017). Regarding claim 1, the Examiner states that Causevic shows a method and apparatus for determining the level of sedation in a patient who is receiving a conscious sedation drug comprising: applying a first vibration stimuli to a patient, the vibration stimuli comprising vibratory pulses; instructing the patient to respond to the vibration stimuli; and monitoring a patient's response to the vibration stimuli.

Applicant respectfully transverses the Examiner's rejection of Claim 1 because, according to Applicant's understanding, the Causevic reference neither teaches nor suggests the elements of the Applicant's invention. It is Applicant's understanding that a claim is anticipated only if each and every

element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See for example MPEP 2131.

Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim, and the elements must be arranged as required by the claim. Under this standard, Applicant submits that Causevic fails to anticipate independent claim 1.

At a minimum, the Causevic reference does not, according to Applicant's understanding, teach or suggest "instructing the patient to respond to the vibration stimuli."

Causevic teaches as summarized at paragraph 33:

The apparatus and method of the present invention are based in part on the concept that an auditory brain response in a patient is useful as an indicator of depth of sedation or anesthesia in a patient. The methods described herein involve utilizing signal data representative of one or more of a patient's EEG, ABR, AMLR, and ALR bio-potentials, to provide a rapid monitoring of the depth of anesthesia in the patient. Alternative methods of the present invention involve combining signal data representative of one or more evoked bio-potentials in a patient with signal data representative of the brain's activity. These signals may be representative of a random EEG, a SEP, a VEP, the AMLR, or the ALR, and are utilized to provide for further improved monitoring of the depth of anesthesia in the patient.

As can be appreciated by the Examiner, Causevic teaches a method of monitoring the depth of anesthesia experienced by a patient, which includes identifying a change in one or more evoked bio-potentials (100) using a wavelet transform. (See Abstract).

Nowhere does Causevic teach or suggest instructing a patient to respond to stimuli as recited in claim 1. Causevic does not disclose this claimed element

because indicators of depth of sedation are obtained through involuntary brainstem response [0014] and not in response to an instruction for the patient to respond. Reconsideration is requested.

Rejection under 35 U.S.C. § 103

Claims 2-3 and 5-7 stand rejected as being unpatentable over Causevic in view of John et al. (20060241562) as noted in the Office Action. Reconsideration is requested.

Under MPEP 2143, in order to establish a *prima facie* case of obviousness, the prior art reference or combination of references must teach or suggest all of the limitations of a claim. Based on the prior discussion and claim dependency, it is clear that Causevic in combination with John et al. fails to teach all of the limitation of the claims rejected.

In view of the foregoing requirements for a *prima facie* case of obviousness, Applicant submits that the combined art of record fails to render the amended claims obvious. In particular, Applicant notes that the combination of references fails to teach or suggest all of the limitations of each amended independent claim in accordance with MPEP 2143.03.

Beyond the foregoing shortcomings with respect to the rejections of the independent claims, Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for novelty and non-obviousness.

While Applicant has noted distinctions over the art of record, Applicant notes that several other distinctions exist, and Applicant preserves all rights and arguments with respect to such distinctions.

Conclusion

Applicant submits that in view of the discussion, the rejections under 35 U.S.C. §§ 102(e) and 103 have been overcome and that the invention is now

patentable over the cited prior. The Examiner is respectfully requested to reconsider all rejections and pass this case to issue.

Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, which may be required to Account No. 10-0750/END-5027/VEK.

Respectfully submitted,

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